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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966 No. 882

WALTER C. WRIGHT, JR.,
Petitioner,

v.

PRESS PUBLISHING COMPANY, et al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgments of the Supreme Court of New Jersey entered in the above-entitled cause on September 20, 1966 and November 1, 1966. The respondents are Press Publishing Company, Stanley Fink, William McMahon, William Green, William H. Thompson, and Michael F. Comerford.

OPINIONS OF THE COURTS BELOW

Neither of the opinions below have been reported.

JURISDICTION

The judgments of the Supreme Court of New Jersey were dated and entered on September 20, 1966, and November 1, 1966 (Appendix B, infra). The reason petitioner uses the word "judgments" is that there are two orders or "judgments" from which he hereby seeks relief, one denying his petition for certification and the other granting respondent's motion to dismiss his appeal to the New Jersey Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1257.

STATEMENT OF QUESTIONS INVOLVED

1. Whether the present action was tried in the respondents' newspaper in violation of the right of petitioner to a fair trial under Sec. 1 of the 14th Amendment to the Constitution of the United States of America.

2. Whether freedom of the press gives newspaper publishers and newsmen the privilege of publishing their interpretation of the evidence presented each day in cases in which they are parties plaintiff or defendant, particularly as to libel actions brought against them by public officials.

3. Whether newspaper publishers and newsmen have any duty to investigate the truth of their libelous charges against a public official after being put on notice that there is no truth to what they are saying and that the public official denies the charges.

4. Whether prior and subsequent publications of a defendant newspaper and other evidence tending to show hostility and the background and motivation for same, may be introduced into evidence in order to show knowledge of the falsity of particular statements or the utterance of same with reckless disregard of whether they are false or not.

5. Whether a jury may infer malice from the falsity and libelous nature of the articles themselves, rather than having to look outside the articles for other evidence of malice?

6. Whether the special privilege afforded newsmen to criticize public officials extends to cases in which there was no conduct to criticize—official or unofficial.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved are freedom of the press under the First Amendment to the United States Constitution, as carried into effect by the Fourteenth Amendment; and the right to a fair trial under the due process clause of Sec. 1 of said Fourteenth Amendment. These provisions are set forth in Appendix A, *infra*.

STATEMENT OF THE CASE

(Note: "R" refers to transcript. "P-a" refers to other appendices of petitioner)

Petitioner was elected to the office of City Councilman of Cape May, New Jersey, in October, 1960, following which election the other newly-elected councilmen chose him as Mayor. Cape May had just gone through a change in its form of government from the Commission form to the Council-Manager form, the first city manager taking office about January 6, 1961. Under the new form of government the mayor had no more power than any other councilman, all executive and administrative power being vested in the city manager. *R.S. of N.J.* 40:82-4. However, since petitioner had been one of the leaders in the movement for the change in the form of government and had helped defeat the political organization which had controlled the city for generations, he was the main target of attack by newspapers which favored the Old Regime. Respondents were, at that time, all connected in some capacity with the publication of the Atlantic City Press, the main daily newspaper circulated in the area and the only one with an office and news bureau in the county.

The 3 councilmen, all being new to office, were deluged with questions as to the difficult problems facing the city, some of which had led to the change in the form of government. The newspapers—especially the Atlantic City Press (R. 161-13)—were giving the neophytes a rough time, since the reporters would phone the councilmen individually, get their ideas on controversial subjects and then publish them as though they represented council's set policies, even though the 3 councilmen had not even had a chance to discuss them with each other (R. 189-31). Naturally, this led to uncertainty and turmoil; it was even starting to hurt business. Something had to be done and done right away.

The councilmen discussed the matter with each other over the telephone and decided to have a meeting with the various news reporters that coming Saturday to see if things could not be worked out to everybody's satisfaction.

It was at this time, January 31, ~~1966~~ 1961, that respondent Comerford, a reporter attached to the Wildwood Bureau of the Atlantic City Press, telephoned the petitioner and the following conversation ensued (R. 48-18):

> Comerford: "Hello, Mr. Wright. This is Michael Comerford of the Atlantic City Press."
>
> Wright: "Before you say anything I want to tell you that I am not going to say anything concerning the city. We have been receiving some bad publicity lately and the councilmen and I have decided not to say anything until we work out some efficient and orderly means to disperse press releases. I guess you saw what happened in the Philadelphia Bulletin Sunday."

There was more to the conversation than this, but the above is the fundamental part of it and it has been stipulated by all parties (R. 47-26).

The following day an article (P152a) appeared in the respondents' newspaper, captioned as follows:

"WRIGHT ORDERS BLACKOUT OF CAPE MAY CITY NEWS"

"GAG ACTION FOLLOWS DISPLEASURE WITH CRITICISM OF SALES TAX."

The defensive action on the part of 3 councilmen had been twisted into a "gag action" by 1 of them. Thus began a series of defamations (P152a—P155aa) which lasted from February 1 (Wednesday) to February 5 (Sunday), despite the fact that on February 1 the reporter telephoned the city manager and was told there was no blackout (R. 458-2) (which conversation was immediately relayed to the State Editor in Atlantic City); despite the fact that on February 2 plaintiff denied the blackout through the offices of the Cape May County Gazette and the Cape May Star and Wave (R. 198-22), both of which were published on February 2; despite the fact that the Editor of the Star and Wave informed the Wildwood Bureau Chief on February 2 that there was no news blackout; despite the fact that the defendants had had notice through their own newspaper of February 1 (P152a) that there was to be a meeting of the city council, city manager, and newsmen on Saturday, February 4, to discuss Cape May's publicity problems and how to handle them; despite the fact that the reporter from the Wildwood office had been invited (R. 457-32) (and later reminded) by the city manager, Jack P. Sweitzer, to attend that meeting (but failed to attend and made no inquiry concerning what had transpired (R. 457-18); and despite the fact (as defendants admit) that the telephone conversation between plaintiff and the reporter formed the sole basis of the blackout story (R. 288-29).

On February 1 (the day the first blackout story was published) respondents conducted 2 public opinion polls, and the alleged results were published the next day, side by side with the city manager's denial of the alleged black-

out. (See P153a.) In the same edition there appeared an editorial (P154a) which went even further than the blackout story, implying that the petitioner denied citizens the "right to attend public meetings and have ready access to public records." The news summary for the week had not 1 but 2 accounts of the alleged blackout, and, to top it all off, carried a picture in which petitioner had been posed to look like a dictator! (P155a.)

After all the damage had been done, the respondents came out with an inconspicuous announcement that Sweitzer had been given "control" of the news (P167a). Although petitioner threatened to bring suit on February 1, he held off for several months, hoping the respondents would stop attacking him and distorting the news about Cape May. Finally, it got so that he felt compelled to bring suit to save the city and its form of government. Petitioner's action was instituted in July of 1961. Respondents retaliated 6 weeks later with an action against petitioner. The 2 cases were consolidated for purposes of trial, and both resulted in a verdict of no cause of action. The judgments in both cases were appealed to the Appellate Division of the Superior Court of New Jersey, and both resulted in affirmance. The Per Curiam opinion as to the present case is printed in Appendix B, *infra.* Petitioner sought certification from the Supreme Court of New Jersey and also filed an appeal. The former was denied, and the latter was dismissed, as shown in Appendix B.

Petitioner petitions this Honorable Court for certiorari on 6 grounds, all of which were raised in the courts below. They were raised in the following manner and with the following determinations by the respective courts:

How Federal Questions Were Presented

I. *Questions 1 and 2* (taken together since interrelated)

A. Before trial court

1. Question 1 could not be raised until after the trial since it relates to the question of whether petitioner

was afforded a fair trial. This question and Question 2, which had been raised previously, were raised together as Points 4 and 5 on the Motion for a New Trial (not respectively but jointly, that is, each of them combining the two grounds, namely, the denial of a trial by jury and the denial of a fair trial). The question of whether respondents' publications are to be presumed to have influenced the outcome of a trial and the question of whether they actually did prejudice the outcome, are both subsumed under Points 4 and 5 of the Motion for a New Trial (and both of these question were argued on said Motion). (P118a-5 to 122a-26). These 2 points are printed at P84a and 85a, and the court's comments are at P121a-39 to P122a-26.

2. Question 2 was first raised before the Assignment Judge, the Honorable A. J. Cafiero, on the hearing of petitioner's motion to strike certain defenses and respondent's motion for change of venue. The Court instructed counsel not to try the case in the newspapers. (P120a-24 to P121a-6). Later this question was raised before the trial court during the pretrial and, still later, during the trial. Petitioner tried to get the court to prohibit respondents from publishing their versions of the proceedings in the case, especially as to the trial itself. However, the court did not believe it had the power to do anything (P122a-20) except request defense counsel to exercise some restraining influence over what their clients published each day about the trial. The Court's attention is invited to Supplemental Appendix for Appellant, 38a-15 to 39a-35 and 41a-18 to 42a-17.

3. Questions 1 and 2 were subsumed under Points 4 and 5 on petitioner's Motion for New Trial, and both of these points were argued on said motion (P118a-5 to 122a-26). The court denied the motion for a new

trial. Its ruling on these 2 points is found at P121a-39 to 122a-26.

B. Before Appellate Division

These questions were temporarily abandoned in the Appellate Division since this court denied the petitioner permission to print as exhibits on the Appeal the news articles which establish the proof of his contentions, namely: (a) Newspapers should not be permitted to print day-to-day accounts of cases in which they are involved as party litigants; and (b) petitioner was denied a fair trial by reason of said distorted accounts. Questions 1 and 2 could not have been presented without the newspaper articles as exhibits.

C. Before Supreme Court of New Jersey

Questions 1 and 2 were presented under Point 1 in the Petition for Certification and under Point 1 in the Brief on the Appeal. The court denied the Petition for Certification and dismissed the appeal without commenting upon these questions.

II. *Question 3*

A. Trial court

This question was raised on Interrogatory No. 74 Addressed to All Defendants (R.290-12), Interrogatories 25 to 30 and 58 to 59 Addressed to Thompson (P62a to 62aa), and Interrogatories 21 to 26 Addressed to Comerford (P63a to 63aa). The court struck all of these interrogatories. The hearings and the court's determinations are found on the following pages of Vol. I of the transcript:

Interrog.	*Pages*
Interrog. 74 Addressed to All Defendants	R.288-15 to 296-9
Interrogs. 25 to 30 Addressed to Thompson	R.312-16 to 317-18

Interrog.	*Pages*
Interrogs. 58 and 59 Addressed to Thompson	R.317-24 to 318-8
Interrogs. 21 to 26 Addressed to Comerford	R.318-14 to 318-28

B. App. Div.

This question was presented to the Appellate Division as Points 10, 11, and 12 in the Brief for Appellant. The Appellate Division made no comment on these points in its Per Curiam opinion affirming the judgment of the trial court (Appendix B).

C. Sup. Ct. of N. J.

This question was presented twice: first as Point 3 on the Petition for Certification, then as Point III in the Brief for Appellant on the Appeal. The Court made no comment on this Point in its Order Denying Petition for Certification or in its Order Granting Defendants' Motion to Dismiss Appeal.

III. *Question 4*

A. Trial court

At pretrial (R.1 to 46) the court excluded all the prior and subsequent publications of respondent newspaper tending to show respondents' hostility and the background and motivation for same, except for one, namely, a voters' information page on which respondent newspaper reversed petitioner's picture (as candidate for state senator) with the picture of a man named Wright who was running for county coroner (P164a). All of these proposed exhibits are in the large Appendix Vol. II. In addition to the exclusion of exhibits certain testimony was ordered stricken, such as that concerning the beginning of the controversy between petitioner and respondents (R.439-27

to 447-10), and petitioner's complaints to the city editor about the way the Wildwood Bureau was distorting the news (R.114-13 to 28). Also the Court's attention is invited to the colloquy concerning certain important letters petitioner attempted to have admitted into evidence. The letters are shown at P159a and 160a. The court's determination excluding them is contained at R.319-36 to 334-32.

B. App. Div.

This question was presented to the Appellate Division in Points 3, 4, 5, 6 and 9. The Appellate Division affirmed the judgment without ruling on these points specifically.

C. Sup. Ct. of N. J.

This question was presented to the Supreme Court on both the Petition for Certification and the Brief on appeal—Point 4 on the former and Point IV on the latter. The Court made no reference to this question in denying certification and dismissing the appeal (Appendix B).

IV. *Question 5*

A. Trial court

This question was presented to the trial court on Request to Charge #24, and was made one of the grounds for the Motion for New Trial (P87a). All Requests to Charge were declined. The ruling as to Request #24 is found at R.643-16.

B. App. Div.

This question was presented to the Appellate Division as part of Point 17 in the Brief on the Appeal and also on pg. 7 of the Supplemental Brief. No mention was made of this question in the opinion affirming the judgment (Appendix B).

C. Sup. Ct. of N. J.

This question was presented on the Petition for Certification as Point 5 and on the appeal as Point V. No mention was made of it in the Order Denying Certification or in the Order Dismissing the Appeal.

V. *Question 6*

A. Trial court

This question was presented to the trial court on Requests to Charge Nos. 21, 23, 24, 26, 30 and 31 (P86a to 88a), which follow the old law as to malice. As stated before, the trial court denied all Requests to charge (R.642-39 to 644-8). The Requests to Charge were included in the Motion for New Trial.

B. App. Div.

This question was presented to the Appellate Division as Point 17 and elaborated on later at pages 5 to 10 of Supplemental Brief. No mention was made of the denial of any of the Requests to Charge in the Opinion affirming judgment.

C. Sup. Ct. of N. J.

This question was presented on the Petition for Certification as Point 8, and on the appeal as Point VI. It was not commented upon in the Order Denying Certification or in the Order Dismissing the Appeal.

REASONS FOR GRANTING THE WRIT

1. A comparison of respondents' 9 newspaper accounts (first 9 exhibits in Supplemental Appendix for Appellant) of the trial with each day's testimony shows the reporting

of the proceedings as unfair and prejudicial to petitioner and not conducive to a just verdict. Petitioner assumes that some, if not all, of the jurors on a political libel trial will read the case in the newspapers to see what was presented to them in court, and *all* of them will be influenced (to varying degrees, of course) by public opinion resulting from the news reports. In a case against a newspaper, the jurors will be influenced mainly by the newspaper's reports because they will be unable to find any other reporting in depth. (Newspaper publishers shie away from extended coverage of libel suits, apparently because they are afraid they will give somebody the idea of bringing one against themselves. Detailed accounts are given only when there is something to be gained, as when they are personally involved as plaintiffs or defendants.)

This question has never received real consideration. The newspaper articles which form the basis of petitioner's contention that he never received a fair trial were never marked into evidence, since petitioner was unaware of the practice of introducing things into evidence on a motion for new trial. (There is nothing in the subject in the Rules of Court.) However, the articles published during the opening days of the trial were some of the most damaging, and they were read and considered by the trial court at the time they appeared in the newspaper (P122a-5). The other articles were read by the court after the trial but before the hearing on the motion for new trial (P122a-19). Since the court had heard the evidence and read the newspaper articles concerning same, petitioner thought it would be better to spend the twenty minutes allotted to him (P117a-34) for oral argument on the motion for new trial on his other grounds, one of which contained almost 100 Requests to charge. If he had plunged into an analysis of the newspaper articles, there would have been no time for anything else. Fortunately, the court let petitioner have ten minutes overtime (P121a-25),

but this still was insufficient time to present the 9 grounds adequately.

Petitioner can not see how his failure to introduce the newspaper articles into evidence prejudiced anybody. The main purpose of exhibits is not to form part of a record but to give the court and the adverse parties notice of what is before them for discussion. The court stated that it had read the articles prior to the hearing, and the respondents must be charged with notice, if not knowledge, of what the said articles contained, since they published them. Newspaper clippings are not the kind of exhibits which could be altered in some way, and therefore it was not of any real importance that they be examined or marked into evidence.

Petitioner attempted to have the articles marked as exhibits at the first stage at which it seemed important to do so, that is, in connection with the appeal. He made the motion for having them made a part of the record before he submitted his brief and appendix. (Petitioner can find no statute, court rule, or decision of the courts of New Jersey which states that exhibits may not be added to the record on an appeal.) The Appellate Division permitted no oral argument and denied the motion without comment. The Supreme Court affirmed the action of the Appellate Division, again without oral argument or comment. The proceedings are all recorded in the Supplemental Appendix for Appellant, 36a to 59a.

Petitioner seeks certiorari under the general supervisory powers of this Court.

2. Since it is difficult for newsmen to be impartial and objective in reporting matters in which they have no personal interest (such as murder trials), how can they be factual, unemotional and unbiased in reporting trials in

which they have a direct, personal interest as a party litigant? It is meaningless to say that a person has the right to a fair trial or a trial by jury if one of the parties to the controversy is the main daily newspaper circulated in the area and it is permitted to publicize its day-to-day versions of the trial.

Having experienced the heavy load of rowing against the tide of his adversaries' news reporting, petitioner endeavored before (Supplemental Appendix for Appellant, 38a-37) and during (39a-5) the course of the trial to have the tide held back. Freedom of the press would not have been curtailed by a court order; the only thing which would have been curtailed is license of the press. That the Court had the power to order the respondents to cease and desist their accounts of the court proceedings is apparent from the case of *Estes* v. *State of Texas*, 381 U.S. 532 (1965), where telecasts were forbidden. A newspaper publisher can not wear two hats at the same time: one as an independent reporter of the news and the other as a party litigant. There is too much of a conflict between the publisher's self-interest and the public's right to know.

Although petitioner alleges actual prejudice from respondents' articles, he also alleges that the practice of permitting newsmen to publish reports as to trials in which they are litigants "involves such a probability that prejudice will result that it is deemed inherently lacking in due process." *Estes, op. cit.* In *Rideau* v. *State of Louisiana*, 373 U.S. 723 (1963) and *Turner* v. *State of Louisiana*, 379 U.S. 466 (1965), the Court did not stop to consider the actual effect of the practice which interfered with the constitutional right to a fair trial, but struck down the conviction on the ground that prejudice was inherent in it. Plaintiff contends that the privilege of newsmen to publish day-by-day accounts of a trial where their own reputations and financial interests are at stake,

poses more probability of resultant prejudice than the telecast of proceedings over the airwaves by independent television show producers.

Every day the jury heard plaintiff's witnesses testify, and every day they received defendants' version of the events of the day before. The Court would have to look far and wide to find one single citizen who would think it fair for newsmen to publish reports of their own court cases. Now that there is so much consideration being given to the question as to the extent to which attorneys may be permitted to cause articles to be published concerning their cases, it would seem that the time has come for the consideration of the extent to which their clients should be permitted to publicize the "facts" of their cases, especially when their clients are newspaper publishers. The petitioner seeks certiorari as to this question since it is a question which has never been settled but which should be settled in the interest of justice—not only as to the present case but as to all future cases where newspapermen who are parties to the cause will try to influence the outcome through their publications, if unrestrained in advance.

3. The answer to this question seems obvious. What more appropriate way is there of proving reckless disregard for the truth (and, therefore, malice) than through the fact that no investigation was made as to the accuracy of the libelous charges. It is almost impossible to prove actual knowledge of the falsity of statements contained in a newspaper and, therefore, it is important that the Court define the types of evidence which are admissible as proof of reckless disregard.

In the case at bar an interrogatory was asked and answered as follows:

"74. Please state the names and addresses of all the officials, department heads and employees of the City

of Cape May whom each of the individuals got in touch with to check on the City Manager's statement that there must have been a misunderstanding as to the alleged news blackout, or to check on the general question of whether there was a news blackout.

"Ans. Comerford: I did not check with any of the officials, department heads and employees to check on any statement City Manager may have made concerning said blackout.

"Ans. (Thompson) Have no personal knowledge."

(No answer to this question was given by the other defendants.)

The discussion and the court's ruling as to this interrogatory are at R.288-15 to 296-9. The Court's attention is invited to P62a to P63aa for other interrogatories listed under this Point. The arguments and rulings are contained at R.312-16 to 317-18, 317-24 to 318-8, and 318-14 to 318-28.

Petitioner believes that the action of the trial court in striking these interrogatories and the action of the Appellate Division in affirming the lower court's action, constitute reversible error since the holding is in conflict with *Caldwell* v. *Crowell-Collier Pub. Co.,* 161 F.2d 333 (Cir. Ct. 5th Cir., 1947), wherein the court held that, once a newspaper publisher has notice that there is no truth in his story, he publishes it (or continues to publish it) at his peril. The fact that "attention was called to the falsity of the intended publication but it was proceeded with" despite such notice, is evidence of malice in fact (p. 336). (In the case at bar the publication of the libelous charges was continued for four days after notice that there was no news blackout had been received from the city manager.) Evidence of such notice apparently removes the publication from the protection of the law enunciated in *New York Times Company* v. *Sullivan,* 376 U.S. 254 (1964), according to p. 1454 of the Annot. on this case

contained in 95 *A.L.R.2d* 1450. In *Keogh* v. *Drew Pearson*, 244 F. Supp. 482 (U.S. Dist. Ct., D.C. 1965), the court pointed out that "there would be a time in which the publisher would be forced to investigate the truthfulness of obviously defamatory material" (p. 485) (or be guilty of recklessness for not doing so).

The question of whether a failure to investigate is evidence of the reckless disregard which constitutes malice is a question which would seem to require settling by this Court. In the *New York Times* case it was held that the failure to investigate under the circumstances of that particular case did not constitute evidence of malice, but the question of whether a failure to investigate may be considered evidence of malice has not been settled.

The importance of this question is shown by the fact that the only reason the Appellate Division could assert for affirming the lower court's judgment was the jury's finding of insufficient evidence of malice. How can a person prove malice if the court excludes all evidence of it?

4. The fact that malice must be proved through knowledge of the falsity of the particular statements or reckless disregard in regard to the truth or falsity of same, does not mean that prior and subsequent publications of defendant newspaper should not be admissable. Evidence of the decidedly pro-Republican proclivities of the respondents (and the anti-Wright proclivities) should have been admitted into evidence if only to show the background from which the intent might better be judged. For, knowledge of falsity and reckless disregard as to falsity are subjective matters, and therefore circumstantial evidence is about the only way these things can be proved. But the trial court refused to permit the introduction into evidence of prior and subsequent articles which formed the background of respondents' acts and practically all other evidence of hostility and motivation.

The decision in the *New York Times* case was rendered in the middle of the trial of the present case. Ever since that time the principles of the law as to libel actions brought by public officials against newspaper publishers has been in a state of uncertainty. What types of evidence are admissable to establish knowledge of falsity or reckless disregard? There are no guidelines on the subject, and the trial court in the present case has given the opinion in the *New York Times* case the strictest interpretation, namely, that malice may be proved only through *direct* evidence of knowledge of falsity or reckless disregard. Whether this is the correct interpretation is a question which petitioner believes should be settled at the earliest opportunity, since it is a question which will keep coming up as long as there are public officials and newspapers.

5. There is nothing in the charge to the jury (P142a-10 to 144a-30) to indicate that the falsity or libelous nature of the articles themselves is sufficient to support an inference of malice. Intrinsic proof of malice is mentioned, but no definition or examples are given. There is some talk about exaggeration and gross exaggeration, but nothing about the falsity or libelous nature of an article as giving rise to an inference of malice.

Req. No. 24 (P87a) would have filled this need. There was no reason for the court to deny this request, since it states the law both accurately and completely. And it has application to the present case, since the Appellate Division in *Walter C. Wright, Jr.* v. *Press Publishing Co.*, unpublished opinion, Docket No. A-277-62, June 10, 1963 (Appendix B, *infra*), stated that it found "no merit" to the contention that "the words complained of . . . were not libelous" or to the contention that the words were true. (The trial court, for some strange reason, found the articles to be not libelous (P149a-32).)

In the *Keogh case, op. cit.*, at pp. 484-485, it was held that, even in cases where willful falsity or recklessness

with the truth is considered the test of malice, malice can be implied "from the fact of a defamatory statement" without having to look at any "outside facts."

Petitioner contends that the denial of his Req. to Chg. No. 24 constituted prejudicial error, since he had been stripped of practically all of his proof of malice except the viciousness of the articles themselves, and even that was kept from the jury's consideration because of the court's refusal to charge this request.

Petitioner seeks certiorari, since the question of whether the language of a libelous publication may be considered in determining the intent of the publisher needs clarification. As stated in the *New York Times* case, criticism of public officials should be privileged no matter how vicious the language is. But, on the other hand, the viciousness of the language is certainly some evidence as to whether it was uttered in good faith.

6. Defense counsel admitted that his clients had based the blackout story upon the telephone conversation (R.288-29). "Our case stands or falls upon the blackout story." They offered not one single witness who had been ordered not to give out city news, who had been denied access to public records, or who had been denied the right to attend public meetings. Yet they had had the audacity to assert these things in their newspaper! The headline "Wright Orders Blackout of Cape May City news" was based on nothing more than Wright's statement to Comerford that he and the other two councilmen had decided not to discuss city news with him (or other reporters) until some orderly and efficient system had been worked out for handling Cape May's publicity problem. But there would be a meeting with reporters Saturday to try to work things out, petitioner had told him.

No sooner were the words spoken on the telephone to respondent Comerford than they were relayed to the state

editor, and he took the matter up with the editor. Then the wheels began to turn, resulting in not one libelous publication, but several; articles galore, blaring headlines, anonymous and non-anonymous polls, editorial treatment, and even a picture in "They Made the News"! Within a 24-hour period everyone was involved from the reporter on up to the vice-president and publisher. The respondents all worked together and gave the petitioner a good working-over (which is just what the Wildwood Bureau Chief had threatened (R.92-10).) Incidentally, it seems very much out of character for newspapermen to take petitioner's "word for everything" (R.454-27) and never "make any attempt to secure any news from the City of Cape May during this period of time." (R.509-16; 454-24; 564-7).

Petitioner contends that Req. to Charge Nos. 21, 23, 24, 26, 30 and 31 (P86a-88a) on the "old" law as to malice should have been granted, since the decision in *New York Times Company* v. *Sullivan,* 376 U.S. 254, 279, 84 S. Ct. 710 (1964), by its very wording applies only to cases in which a newspaper utters a "defamatory falsehood relating to a person's official conduct." There was no act upon which to comment in the present case—no conduct, official or unofficial. Petitioner, under the Council-Manager form of government has no executive power even. (R.S. of N. J. 40:82-4). Certainly the United States Supreme Court did not intend to license newsmen to fabricate stories out of the whole cloth!

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The application to the present case of the principles laid down in the *New York Times* case which were based on freedom of the press, impugn the court's rulings as to the last 4 Questions if (a) the principles of the *New York Times* case are inapplicable to the present case because of there being no official conduct to criticize, or (b) the *New York Times* requirements for proof of malice were given

too strict an interpretation. Since the respondents won the case partly through freedom of the press (as shown in the charge to the jury) and since the judgment was sustained only because of freedom of the press (as shown in the Appellate Division's opinion, which applied the rule as to malice which relates only to public officials, malice being presumed from the falsity and libelous character of a publication as to everybody else), the First Amendment, as carried into effect by the due process clause of the Fourteenth Amendment, is involved in this appeal.

A libel suit against a newspaper guilty of purposely misrepresenting the facts for a political purpose, is not the same as one against a newspaper guilty of an innocent mistake, like the New York Times. Petitioner realizes that it is the general policy of the courts to discourage libel suits, but it should not discourage libel suits arising out of the concerted action of a group of newspapermen to misinform the public for political purposes.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Petitioner, Pro Se

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